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File No. B Emergency Powers Whipping 8/41

Legal

DEPARTMENT

B BRANCH

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Subject:—

Governor's Bill No XI of 1941

A Bill to amend the Law relating to the Punishment of whipping in the Province of B. Bay

(Repeal of Bom. X of 1933)

Bom XI of 1941

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File No. B (Emergency Powers) Whipping/41
Repeal of Bom X of 1933

Std. Sectt. Slip 24 B c.

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A Bill to amend the law relating to the punishment of whipping in the Province of Bombay is sent herwith. The Bill provides for the punishment of whipping for the offences of (a) rioting punishable under sections 147 and 148, (b)grievous hurt punishable under sections 325 and 326 and (c) mischief by fire punishable under sections 435 and 436 of the Indian Penal Code. Home Department may consider whether the offence of causing hurt by dangerous weapons or means punishable under section 324, Indian Penal Code, should also be included.

2. Under executive instructions the Bill requires the previous approbal of the Governor-General. The subject-matter of the Bill falls under entry 1 of the Concurrent Legislative List. The Bill provides for an additional punishment of whipping for certain offences punishable under the Indian Penal Code. The question whether the provisions of the Bill are repugnant to the provisions of he Code is not entirely free from doubt. In Vishwanath Narayan Sing vs. Hirihar Gir (Federal Law Journal Reports, Part II, Vol.I page 179) the High Court of Patna has held that in order that two provisions of law may be called repugnant to one another, they should be so contradictory that it will be impossible to carry out both of them. In this view the provisions of the Pendent Bill will not be repugnant to the provisions of the Indian Penal Code. In G.P. Stewart vs Brojendra Kishore Chaudhury (Federal Law Reports, Vol.II, page 112) the Bengal High Court has however held that the test referred to above and followed in the Patna case for determining repugnancy is too narrow. According

to the view taken by the Bengal High Court, it may be possible to obey both laws and yet the provisions of one may be repugnant to the provisions of the other. In this case, the present Bill provides additional punishment for the offences punishable under the Indian Penal Code. According to the Bengal decision referred to above, it appears that the provisions of the present Bill will be repugnant to the provisions of the Indian Penal Code, in which case the Bill will have to be reserved for consideration of the Governor-General with reference to section 107(2) of the Government of India Act, 1935. I am inclind to agree with the view taken by the Bengal High Court and in any case it would be safer to follow the ruling of the Bengal High Court and reserve the Bill for consideration of the Governor-General.

Sd/- P.N.E.
21/5
Remembrancer of Legal Affairs.

O.C.

R.R. to H.D. , No. 4627 , dated the 21st May 1941.

IMMEDIATE.

No.4651
Legal Department.
Bombay Castle, 21st.May.1941.

From

P.N. Moos, Esquire, I.C.S.,

Secretary to the Government of Bombay.

To

The Secretary to the Governor.

Subject:- A Bill to amend thalaw relating to the punishment of whipping in the Province of Bombay.

Sir,

I am directed to forward herewith a copy of the Bill to amend thelaw relating to thepunishment of whipping in the Province of Bombay prepared by His Excellency the Governor of Bombay under para.(2) of the Proclamation dated the 4th November 1939 issued by him under section 93 of theGovernment of India Act, 1935.

2. None of the provisions of theBill affects any special responsibility of he Governor under section52(1) of the Government of India Act, 1935, or falls within the purview of clause (a), (b),(c)or (d)of Paragraph XVII of the Instrument of Instructions to the Governor of Bombay.

3. The subject matter of the Bill falls under entry No.1 in the Concurrent Legislative List in theSeventh Schedule to the Government of India Act, 1935.

4. As cluse 3 of the Bill provides for an additional punishment for the offences punishable under sections 147, 148, 324, 325, 326, 435 and 436 of the Indian Penal Code, the provisions of the Bill are repugnant to the provisions contained in the said sections of thdIndian Penal Code, which is an existing Indian law relating to entry No.1 in the Concurrent Legislative List. The Bill will have therfore to be reserved for the consideration of theGovernor- General with reference topara (2)

of the Proclamation and section 107(2) of the Government of India Act, 1935.

5. I also forward herewith six spare copies of the Bill, out of which five copies are for transmission to the Secretary to the Governor-General (Public).

I have the honour to be,

Sir,

Your most obedient servant,

O.C. Sd/-
21/5
Secretary to the Government of Bombay,
Legal Department.

Through

The Secretary to the Government of Bombay,

Home Department.

K.

No. 201(32).

Office of the Governor's Secretary,
Government House,

Bombay, 28th May 1941.

From

J.B. Irwin, Esquire, D.S.O. , M.C. , I.C.S.,
Secretary to the Governor of Bombay.

To

The Secretary to Government ,
Legal Department, Bombay.

Subject :- A Bill to amend the law relating to the punishment of whipping in the Province of Bombay.

Sir,

With reference to your letter No. 4651, dated the 21st May 1941, I am directed to state that intimation has been received from theSecretary to the Governor-General (Public) that the Governor-General assented to the Bombay (Emergency Powers) Whipping Bill, 1941, on the 27th May 1941.

I have the honour to be,

Sir,

Your most obedient servant,

Sd/-

Secretary to theGovernor of Bombay.

Acts.
Publication of the Bombay (Emergency Powers) Whipping Act, 1941.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 4933

Bombay Castle, 29th May 1941.

Letter to the Secretary to the Governor No. 4651, dated the 21st May 1941.

Letter from the Secretary to the Governor, No.201(32), dated the 28th May 1941:-

"With reference to your letter No. 4651, dated the 21st May 1941, I am directed to state that intimation has been received from the Secretary to the Governor-General(Public) that the Governor-General assented to the Bombay (Emergency Powers) Whipping Bill, 1941, on the 27th May 1941."

RESOLUTION.-The law should be published as Bombay Act No. XI of 1941, in the Bombay Government Gazette, dated the 29th May 1941.

2. The Act should be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the Home Deparment.

By order of the Governor of Bombay.

Sd/-
Original
(P.N. MOOS ,
for (Secretary to Government.

To

The Manager, Government Central Press , Bombay (with a copy of the Act and with a request that 15 Gazette copies of the Act may be forwarded to the Legal Department).
The Home Deaprtment.
* The Oriental Translator to Government.)
The Secretary to the Bombay Legislative Council.) With a copy of the Act.
The Secretay to the Bombay Legislatice Assembly.)

*With five extra Copies.

B.

The following Act made by the Governor of Bombay in exercise of the powers vested in him by virtue of the Proclamation dated the 4th November 1939 issued by him under section 93 of he Government of India Act, 1935 having be n assented to by the Governor General on the 27th May 1941, is hereby published for general informaion.

P.N. MODS,

Secretary to the Government of Bombay,
Legal Department.

BOMBAY ACT NO. XI OF 1941.

(First published, after having recieved the assent of the Governor in the " Bombay Government Gazette" on the * May 1941).

*Press: Please insert here the date of the publication of the Act in the Bombay Government Gazette.

An Act to amend the law relating to the punishment of whipping in the Province of Bombay.

Whereas it is expedient to amend thalaw relating to the Punishment of whipping in the Province of Bombay;

And whereas theGovernor of Bombay has assumed to himself under the Proclamation dated the 4th November 1939 issued by him under section93 of the Government of India Act, 1935, all powers vested by or under thesaid Act in the Provincial Legislature;

26 Geo. 5, ch.2.

Now, therefore, in exercise of thesaid powers, the Governor of Bombay is pleased to make the following Act;

Short title.

1. This Act may be called he Bombay (emergency Powers) Whipping Act, 1941.

Extent and commencement.

2. (1) This Act shall extend to the whole of of the Province of Bombay.

(2) Section 1, this section and section 4 shall come into force at once, Tthe Provincial Government may, by notification in the official Gazette, direct that section 3 shall come into force in such area and from such date as may be specified in such notification.

Punishment of Whipping for certain offences.

IV of 1909.

XLV of 1860.

3. In addition to thepersons who may be punished with whipping under section 4 of the Whipping Act, 1909, whoever commits or abets the commission of any offence punishable under section 147, 148, 324, 325, 326, 436 or 436 of the Indian Penal Code may be punished with Whipp- in addition to any punishment to whichhe may be liable for such offence or for abetment of such offe nce under thesaid Code.

Repeal of Bom.X of 1933.

Bom.X of 1933.

4. The Bombay (Emergency Powers) Whipping Act, 1933, is repealed.

Legal Department.

Governor's Bill No. XI of 1941 (Bombay) (Emergency Powers) Whipping Bill has received the assent of the Governor General on the 27th May 1941 and it is being published as Bombay Act XI of 1941 in the Bombay Government Gazette dated the 29the May 1941.

2. Adraft notification under section 92(1) of the Government of India Act, 1935 for applying theAct to the partially excluded areas in theProvince is furnished herewith to the Home Department.

O.C. Sd/-

For Secretary to theGovernment of Bombay,
Legal Department.

U.R. TO H. D. No. 4934 , dated the 29th May 1941..

Notification.

Home Department.

Bombay Castle, May 1941.

No. In exercise of the powers conferred by sub- section (1) of section 92 of the Government of India Act, 1935, the Governor of Bombay is hereby pleased to direct that the Bombay (Emergency Powers) Whipping Act, 1941) shall apply to the partial y excluded areas in the Provinc of Bombay.

By order of the Governor of Bombay

Secretary to Government.

19 17

No.201 (32).

Office of the Governor's Secretary,
Government House,

Bombay,31st May 1941.

From

J.B. Irwin, esquire, D.S.O. MpC. I.C.S.,
Secretary to the Governor of Bombay.

To XMX

The Secretary to Government,
Legal Department, Bombay.

Subject:- - A Bill to amend the law relating to the punishment of whipping in the Province of Bombay.

Sir,

In continuation of my letter No. 201(32), dated the 26th May 1941, I am directed to forward herewith the authentic copy of the Bill to amend the law relating to the punishment of whipping in the Province of Bombay, with His Excellency theGovernor-General's assent signified thereon.

I have the honour to be,

Sir,

Your most obedient servant,

Sd/-

for Secretary to the Governor of Bombay.